

Application No. 09/987,885
Response to Office Action dated September 20, 2004

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REMARKS

Applicants would like to thank Examiners Venkat and Dixon for the helpful and courteous interviews held during the week of November 15, 2004. As discussed on November 17, 2004, with Mr. Dixon, Claim 59, which has now been cancelled, has been further modified and resubmitted as Claim 79. A very similar claim has been presented as Claim 99, special to lips. In claim 79 and 99, the Markush group of silicone-containing components now recites a volatile silicone oil, a nonvolatile silicone oil, and a crosslinked silicone, rather than a silicone-containing component in general, and rather than a silicone polymer in general. This amendment thus addresses the issue of possible confusion between the recitation of both a silicone gum and a generic silicone polymer in the same composition, and clearly distinguishes these materials by 1) specifying the exact chemical structure of the gum in the claim itself, and 2) limiting the Markush group to the noted oils and a crosslinked silicone. Since the gum is not crosslinked, there is no confusion between these species in new claim 79. In addition, this claim amendment is supported by the Examples, which use crosslinked silicones. See, for example, Example 5 at col. 6, line 24, using a crosslinked silicone and, e.g., Example 3 at col. 2, lines 48-50, also using a crosslinked silicone.¹

As discussed and agreed with Examiner Dixon, the above amendment addresses any potential issue arising under 35 U.S.C. 112 with regard to support or confusion that was raised by proposed modified Claim 59, thus putting the new independent claims, and claims dependent thereon, in condition for allowance.

¹ See paragraph 26 of U.S. Patent Publication 2004/0209070, attached.

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Finally, Applicants again note MPEP 1414, especially the paragraph bridging columns 1 and 2 of page 1400-29 of the May 2004 revision, and further note that paragraphs 9, 10 and 11 of the Declaration state 1.) that the patent is partly inoperative because patentee claimed less than they had a right to claim, 2.) that the original claims omitted preferred embodiments,² and 3.) that to correct this error more claims were added. Thus, the Declaration is proper:

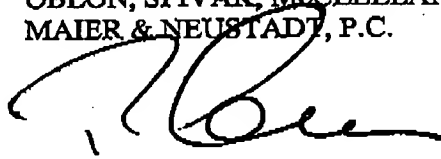
If the initial reissue oath/declaration "states at least one error" in the original patent, and, *in addition*, recites the specific corrective action taken in the reissue application, the oath/declaration would be considered acceptable even though the corrective action statement is not required.

MPEP 1414, page 1400-29, emphasis in original.

Accordingly, and in view of the interviews and the above amendments and remarks, Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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² These statements satisfy the requirement for an acknowledgement of an error.

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